

AN ACT

relating to the powers and duties of certain master mixed-use property owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 11, Property Code, is amended by adding Chapter 215 to read as follows:

CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS

Sec. 215.001. DEFINITIONS. In this chapter:

(1) "Appraised value" means the property value determined by the appraisal district that establishes property values for taxing entities levying taxes on property in a mixed-use development.

(2) "Property owners' association" or "association" means, unless otherwise indicated, a master mixed-use property owners' association.

(3) "Dedictory instrument" has the meaning assigned by Section 209.002.

(4) "Self-help" means the process by which a property owners' association takes remedial action with regard to property governed by the association.

Sec. 215.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a property owners' association that:

(1) includes:

(A) commercial properties, including hotel and

1 retail properties, that constitute at least 35 percent of the total  
2 appraised property value of the mixed-use development governed by  
3 the association;

4 (B) single-family attached and detached  
5 properties that constitute at least 25 percent of the total  
6 appraised property value of the mixed-use development governed by  
7 the association; and

8 (C) multifamily properties that constitute at  
9 least 10 percent of the total appraised property value of the  
10 mixed-use development governed by the association;

11 (2) governs at least 6,000 acres of deed-restricted  
12 property;

13 (3) has at least 10 incorporated residential or  
14 commercial property owners' associations that are members of and  
15 subject to the dedicatory instruments of the master mixed-use  
16 property owners' association;

17 (4) has at least 3,400 platted and developed  
18 single-family residential properties and at least 400 separately  
19 platted commercial properties, including office, industrial,  
20 hotel, and retail properties, which together constitute at least 30  
21 million square feet of building area available for rental; and

22 (5) participates in the maintenance of public space,  
23 including parks, medians, and lakefronts, owned by local, including  
24 county, or state governmental entities.

25 (b) This chapter applies to property that is:

26 (1) governed by a property owners' association  
27 described by Subsection (a);

1           (2) located in a master mixed-use development; and  
2           (3) subject to a provision, including a restriction,  
3 in a declaration that:

4                   (A) requires mandatory membership in the  
5 association; and

6                   (B) authorizes the association to collect a  
7 regular or special assessment on all or a majority of the property  
8 in the development.

9           (c) Except as otherwise provided by this chapter, this  
10 chapter applies only to a master mixed-use property owners'  
11 association and not to the independent property owners'  
12 associations that are members of the master mixed-use property  
13 owners' association.

14           Sec. 215.003. APPLICABILITY OF CHAPTER 209. Sections  
15 209.007, 209.008, 209.011, and 209.012 apply only to single-family  
16 residential properties governed by a property owners' association  
17 subject to this chapter.

18           Sec. 215.004. CONFLICTS OF LAW. Notwithstanding any other  
19 provision of law, the provisions of this chapter prevail over a  
20 conflicting or inconsistent provision of law relating to  
21 independent property owners' associations.

22           Sec. 215.005. BOARD POWERS. In addition to any other powers  
23 provided by applicable law and this chapter, and unless otherwise  
24 provided by the dedicatory instruments of the property owners'  
25 association, the association, acting through its board of  
26 directors, may:

27                   (1) adopt and amend bylaws;

1           (2) adopt and amend budgets for revenues,  
2 expenditures, and reserves and collect assessments for common  
3 expenses from property owners;

4           (3) adopt reasonable rules;

5           (4) hire and terminate managing agents and other  
6 agents, employees, and independent contractors;

7           (5) institute, defend, intervene in, settle, or  
8 compromise litigation or administrative proceedings on matters  
9 affecting a property governed by the association;

10           (6) make contracts and incur liabilities relating to  
11 the operation of the association;

12           (7) regulate the use, maintenance, repair,  
13 replacement, modification, and appearance of the property governed  
14 by the association;

15           (8) make improvements to be included as a part of the  
16 common area;

17           (9) acquire, hold, encumber, and convey in its own  
18 name any right, title, or interest to real or personal property;

19           (10) purchase an investment property that is not part  
20 of the common area;

21           (11) grant easements, leases, licenses, and  
22 concessions through or over the common elements;

23           (12) impose and receive payments, fees, or charges for  
24 the use, rental, or operation of the common area and for services  
25 provided to property owners;

26           (13) impose interest, late charges, and, if  
27 applicable, returned check charges for late payments of regular

1 assessments or special assessments;

2 (14) charge costs to an owner's assessment account and  
3 collect the costs in any manner provided in the restrictions for the  
4 collection of assessments;

5 (15) adopt and amend rules regulating the collection  
6 of delinquent assessments;

7 (16) impose reasonable charges for preparing,  
8 recording, or copying amendments to resale certificates or  
9 statements of unpaid assessments;

10 (17) purchase insurance and fidelity bonds, including  
11 directors' and officers' liability insurance, that the board  
12 considers appropriate or necessary;

13 (18) subject to the requirements of the provisions  
14 described by Section 1.008(d), Business Organizations Code, and by  
15 majority vote of the board, indemnify a director or officer of the  
16 association who was, is, or may be made a named defendant or  
17 respondent in a proceeding because the person is or was a director  
18 or officer;

19 (19) if the restrictions vest the architectural  
20 control authority in the association:

21 (A) implement written architectural control  
22 guidelines for its own use, or record the guidelines in the real  
23 property records of the applicable county; and

24 (B) modify the guidelines as the needs of the  
25 development change;

26 (20) exercise self-help with regard to property  
27 governed by the association;

1           (21) exercise other powers conferred by the dedicatory  
2 instruments;

3           (22) exercise other powers necessary and proper for  
4 the governance and operation of the association; and

5           (23) exercise any other powers that may be exercised  
6 in this state by a corporation of the same type as the association.

7           Sec. 215.006. ANNUAL MEETING OF ASSOCIATION MEMBERS; NOTICE  
8 OF ANNUAL OR SPECIAL MEETING. (a) An annual meeting of members of a  
9 property owners' association must be conducted in accordance with  
10 the association's dedicatory instruments.

11           (b) Unless otherwise provided by a dedicatory instrument,  
12 an annual meeting of the property owners' association members is  
13 open to association members and must be held in a county in which  
14 all or part of the property governed by the association is located  
15 or in a county adjacent to that county.

16           (c) Unless otherwise provided by a dedicatory instrument,  
17 the board shall give members notice of the date, time, place, and  
18 subject of an annual or special meeting of the members. The notice  
19 must be delivered to each member not later than the 10th day and not  
20 earlier than the 60th day before the date of the meeting.

21           (d) A notice under Subsection (c) must be posted in a  
22 conspicuous manner reasonably designed to provide notice to  
23 association members:

24           (1) in a place located outside the corporate offices  
25 of the association that is accessible by the general membership  
26 during normal business hours; or

27           (2) on any Internet website maintained by the

1 association.

2 (e) Unless otherwise provided by a dedicatory instrument,  
3 any number of the members may attend the meeting by use of  
4 videoconferencing or a similar telecommunication method for  
5 purposes of establishing full participation in the meeting.

6 Sec. 215.007. BOARD MEETINGS. (a) A meeting of the board  
7 of directors of a property owners' association must be conducted in  
8 accordance with the association's dedicatory instruments.

9 (b) Unless otherwise provided by a dedicatory instrument,  
10 elected directors who represent the commercial and residential  
11 membership attend and conduct the business of the property owners'  
12 association at a meeting under this section.

13 (c) In this section, a board meeting has the meaning  
14 assigned by a dedicatory instrument. Notwithstanding this  
15 subsection, the term does not include the gathering of a quorum of  
16 the board at any other venue, including at a social function  
17 unrelated to the business of the association, or the attendance by a  
18 quorum of the board at a regional, state, or national convention,  
19 workshop, ceremonial event, or press conference, if formal action  
20 is not taken and any discussion of association business is  
21 incidental to the social function, convention, workshop,  
22 ceremonial event, or press conference.

23 (d) Unless otherwise provided by a dedicatory instrument,  
24 the board shall keep a record of each regular, emergency, or special  
25 board meeting in the form of written minutes or an audio recording  
26 of the meeting. A record of a meeting must state the subject of each  
27 motion or inquiry, regardless of whether the board takes action on

the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. The board shall make meeting records, including approved minutes, available to a member for inspection and copying, at the member's expense, during the normal business hours of the association on the member's written request to the board or the board's representative. The board shall approve the minutes of a board meeting not later than the next regular board meeting.

(e) Unless otherwise provided by a dedicatory instrument, before the board calls an executive session, the board shall convene in a regular or special board meeting for which notice has been given as provided by this section. During that board meeting, the presiding board member may call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (f) and identifying the specific subdivision of Subsection (f) under which the executive session will be held. A vote or other action item may not be taken in executive session. An executive session is not subject to the requirements of Subsection (d).

(f) Unless otherwise provided by a dedicatory instrument, a property owners' association board may meet in executive session to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member or an agent, employee, contractor, or other



1 representative of the association;

2           (3) all financial matters concerning a specific  
3 property owner;

4           (4) a payment plan for an association member who has a  
5 financial obligation to the association;

6           (5) a foreclosure of a lien;

7           (6) an enforcement action against an association  
8 member, including for nonpayment of amounts due;

9           (7) the purchase, exchange, lease, or value of real  
10 property, if the board determines in good faith that deliberation  
11 in an open board meeting may have a detrimental effect on the  
12 association;

13           (8) business and financial issues relating to the  
14 negotiation of a contract, if the board determines in good faith  
15 that deliberation in an open board meeting may have a detrimental  
16 effect on the position of the association;

17           (9) matters involving the invasion of privacy of an  
18 individual owner;

19           (10) an employee matter; and

20           (11) any other matter the board considers necessary or  
21 reasonable to further assist the association's operation.

22       Sec. 215.008. VOTING. (a) The number of votes to which an  
23 individual or corporation who is a member of a property owners'  
24 association is entitled is determined by the dedicatory instruments  
25 of the association.

26       (b) Each corporation or individual who is a member of the  
27 property owners' association may vote by proxy as provided for

1 nonprofit corporations under Sections 22.160(b) and (c), Business  
2 Organizations Code.

3 (c) Notwithstanding any provision of the certificate of  
4 formation or bylaws to the contrary, a member vote on any matter may  
5 be conducted by mail, by facsimile transmission, by e-mail, or by  
6 any combination of those methods.

7 Sec. 215.009. RESTRICTIVE COVENANTS. (a) A property  
8 owners' association may enforce its restrictive covenants as  
9 follows:

10 (1) by exercising discretionary authority relating to  
11 a restrictive covenant unless a court has determined by a  
12 preponderance of the evidence that the exercise of discretionary  
13 authority was arbitrary, capricious, or discriminatory; and

14 (2) by initiating, defending, or intervening in  
15 litigation or an administrative proceeding affecting the  
16 enforcement of a restrictive covenant or the protection,  
17 preservation, or operation of property subject to the association's  
18 dedicatory instruments.

19 (b) If the association prevails in an action to enforce  
20 restrictive covenants, the association may recover reasonable  
21 attorney's fees and costs incurred.

22 (c) An association may use self-help to enforce its  
23 restrictive covenants against a residential or commercial property  
24 owner as necessary to prevent immediate harm to a person or  
25 property, or as otherwise reasonable. If a property owner commits a  
26 subsequent repeat violation of the restrictive covenants within 12  
27 months of the initial violation, the association is not required to

1 provide the property owner with advance notice before the  
2 association implements self-help.

3 (d) For purposes of Subsection (c), an advance, annual  
4 notice of maintenance requirements is considered notice to the  
5 extent notice is required.

6 Sec. 215.010. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE  
7 COVENANT ACTION. In an action based on breach of a restrictive  
8 covenant, the prevailing party is entitled to reasonable attorney's  
9 fees, costs, and actual damages.

10 Sec. 215.011. COMMON AREAS. A property owners' association  
11 may adopt reasonable rules regulating common areas.

12 Sec. 215.012. RESALE CERTIFICATES. A property owners'  
13 association shall provide resale certificates only for residential  
14 properties and in the manner provided by Section 207.003.

15 Sec. 215.013. MANAGEMENT CERTIFICATE. (a) A property  
16 owners' association shall record in each county in which any  
17 portion of the development governed by the association is located a  
18 management certificate, signed and acknowledged by an officer of  
19 the association, stating:

20 (1) the name of the development;

21 (2) the name of the association;

22 (3) the recording data for the declaration and all  
23 supplementary declarations;

24 (4) the applicability of any supplementary  
25 declarations to residential communities;

26 (5) the name and mailing address of the association;

27 and

1           (6) other information the association considers  
2 appropriate.

3           (b) A property owners' association shall record an amended  
4 management certificate not later than the 30th day after the date  
5 the association has notice of a change in information in the  
6 recorded certificate required by Subsection (a).

7           (c) The association and its officers, directors, employees,  
8 and agents are not liable to any person or corporation for delay in  
9 recording or failure to record a management certificate unless the  
10 delay or failure is willful or caused by gross negligence.

11           Sec. 215.014. PRIORITY OF PAYMENTS. Unless otherwise  
12 provided in writing by the property owner at the time payment is  
13 made, a payment received by a property owners' association from the  
14 owner shall be applied to the owner's debt in the following order of  
15 priority:

16                   (1) any delinquent assessment;

17                   (2) any current assessment;

18                   (3) any attorney's fees incurred by the association  
19 associated solely with assessments or any other charge that could  
20 provide the basis for foreclosure;

21                   (4) any fines assessed by the association;


22                   (5) any attorney's fees incurred by the association  
23 that are not subject to Subdivision (3); and

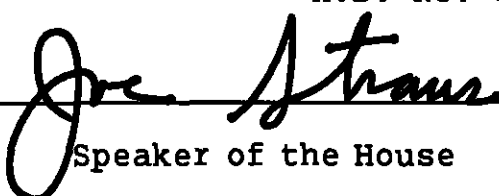
24                   (6) any other amount owed to the association.

25           Sec. 215.015. FORECLOSURE. A property owners' association  
26 may not foreclose an association assessment lien unless the  
27 association first obtains a court order of sale.

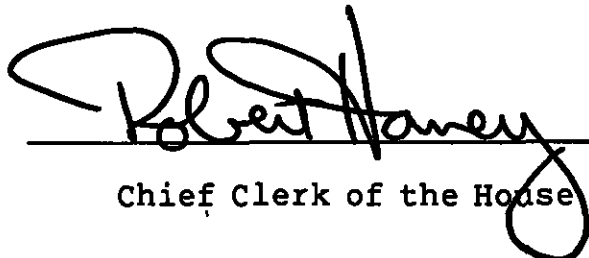
H.B. No. 2869

1        SECTION 2.    This Act takes effect September 1, 2011.


  
President of the Senate

H.B. No. 2869  
  
Speaker of the House

I certify that H.B. No. 2869 was passed by the House on April 26, 2011, by the following vote: Yeas 148, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2869 on May 25, 2011, by the following vote: Yeas 145, Nays 0, 3 present, not voting.

  
Chief Clerk of the House

I certify that H.B. No. 2869 was passed by the Senate, with amendments, on May 24, 2011, by the following vote: Yeas 31, Nays 0.

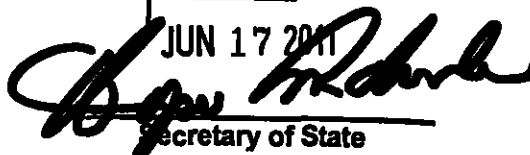
  
Secretary of the Senate

APPROVED: 17 JUN '11

Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4:00 PM O'CLOCK

JUN 17 2011  
  
Secretary of State